HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Appeal No. 275 of 2007

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Between:

The District Collector,
Nizamabad District & others

…Appellants

And

E. Ram Reddy

….Respondent.

:: O R D E R ::

Counsel for the appellants : Government Pleader for Land Acquisition

05.04.2007

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 22.12.2006 passed by the learned Single Judge in Writ Petition No.21368 of 2006, whereby he directed the appellants herein to complete the acquisition proceedings in respect of land measuring Ac.4.23 guntas comprised in Survey No.4, Vencheryal Village, Balkonda Mandal, Nizamabad District and also awarded costs of Rs.50,000/- because possession of the respondent's land was taken by the concerned authorities without tendering 80% of the estimated compensation as per the mandate of Section 17 (3-A) of the Land Acquisition Act, 1894 (for short 'the Act').

Learned Government Pleader for Land Acquisition conceded that 80% of the estimated compensation was not paid to the respondent before taking possession of the land, but argued that the learned Single Judge committed a serious error by imposing costs of Rs.50,000/-. He submitted that the land of the respondent was acquired for providing house-sites to the weaker sections and this important factor has been overlooked by the learned Single Judge while imposing costs only on the ground that possession of the land was taken on 20-3-2004 without paying 80% of the estimated compensation to the respondent. In support of his argument, learned Government Pleader relied on the judgment of the Supreme Court in **Satendra Prasad Jain v. State of U.P.**[1].

We have considered the submissions of the learned Government Pleader, but have not felt impressed. A perusal of the record shows that the action for acquisition of the respondent's land was initiated in 1998, but notification issued under Section 4 (1), which was published in District Gazette dated 12-10-1998, was withdrawn. After five years, fresh notification was issued under Section 4 (1) along with draft declaration under Section 6, which was published in District Gazette dated 14-11-2003. The possession of the land was taken on 20-3-2004 albeit without tendering 80% of the estimated compensation as per the requirement of Section 17(3-A). Not only this, till the filing of the writ petition some time in October, 2006, the acquisition proceedings were not finalized.

In the affidavit filed by him, the respondent pleaded that he has been deprived of land without complying with the statutory provisions.

In the counter affidavit filed by him, Sri Srinivas Sri Naresh, Collector and District Magistrate, Nizamabad detailed the reasons for acquisition of the land and pleaded that none of the legal rights of the petitioner has been

violated and the award enquiry was still under progress.

The learned Single Judge referred to the pleadings and castigated the action of the non-petitioners in depriving the writ petitioner (the respondent herein) of his land by making the following observations:

> "The provisions of Sec.17(3-A) which require the State or the Collector, as the case may be, to estimate the amount of compensation payable for the land so acquired (exercising emergency powers) and to tender and pay 80% of the such estimated compensation to the persons interested, is an integral component of the package of emergency powers u/Sec.17. The legislative purposes underlying this urgency schematic of the Act is to enable persons who are dispossessed of their land (in exercise of the powers of eminent domain of the State and in deviation of the normal process of divestiture following upon the passing of the award), is to enable them to get at least 80% of the estimated compensation amount payable for their sustenance till the process of acquisition is concluded in the fullness of time. Invoking emergency powers without complying with the statutory obligation (to pay/tender 80% of the estimated compensation) is a State conduct of extreme depravity and is a gross illegality.
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> Since the possession was taken after an invocation of urgency (on 14.11.2003 by the Notification u/Sec.4(1) with a simultaneous notification of the Declaration u/Sec.6 of even date), on 20.3.2004, more than 5 months after the declaration of urgency, the conclusion is compelling that there was no urgency to begin with, since at best 30 or 45 days are required to conclude even a ritual of an inquiry u/Sec.5A. At any rate a period of 5 months would have been extravagantly ample by any standard to conduct an enquiry u/Sec.5A to its conclusion. Nevertheless with zeal overtaking rational requirement a ritualistic invocation of urgency was made and advance possession taken leisurely on 20.3.2004. Since 20.3.2004 till the filing of the writ petition on 12.10.2006 the provisions of Sec.17(3-A) of the Act were not complied with and 80% of the estimated compensation has not been tendered to the petitioner. The 1st respondent's counter is silent as to why such deposit was not made. It is represented by the learned Government Pleader for Land Acquisition that 80% of the estimated compensation has been deposited in the Civil Court on 19.11.2006 pursuant to an interim order of this court dated 18.11.2006."

The learned Single Judge then referred to the judgment of the Supreme Court in **Satendra Prasad Jain v. State of U.P.** (supra), extracted paragraphs 14 to 16 of the judgment and proceeded to observe:

> "… The decision does not lay down the principle that the provisions of Sec.17(3-A), (as to the requirement of payment of 80% of the estimated compensation), is merely indicative and not mandatory. The Apex Court did not countenance the stand of a defaulting party who had occupied the land, refused to deposit the compensation amount and was pleading lapse of the acquisition proceedings. In the case on hand the petitioner landowner does not seek culmination of the acquisition proceedings. The petitioner is gravely prejudiced as the respondents had fraudulently and without reasonable cause invoked urgency where there was none, as is apparent from their admitted conduct i.e., in not having taken possession of the land for over 5 months from the date of simultaneous publication of the Notifications u/Secs. 4 and 6, on 14.11.2003. The possession was admittedly taken on 20.3.2004. He is also aggrieved that 80% of the estimated compensation amount as required to be tendered u/Sec.17(3-A) was not tendered and paid to him or even deposited in the Civil Court, as mandated. There is also no explanation offered, why the award was not passed for over 3 years since the notification u/Sec. 4(1) [14.11.2003]. Vague and jejune excuses are offered in the counter viz., that some of the persons interested have not yet received the notices. Presumably the award will await till all the beneficiaries walk into the offices of the respondents 1 to 3 and offer their explanations and attend the award enquiry. This is how the 1st respondent performs its obligations under the Act in a fact setting where urgency was invoked u/Sec.17 of the Act. The land owners are entitled to the economic fruits of the compulsory acquisition of their property, within a reasonable period and during their lifetime."

In the context of the above reproduced observations, we enquired from the learned Government Pleader as to why 80% of the estimated compensation was not offered to the respondent, but he could not give any reply. Rather, he fairly stated that compensation in terms of Section 17(3-A) was paid only after this Court passed an interim order for that purpose.

From what he have noted above, it is clear that the State machinery had used strong arm method to deprive the respondent of his property in complete violation of the statutory provisions. Our nation is governed by a written Constitution which protects the rights of the citizens and, at the same time, mandates the State to take measures to ameliorate the living conditions of weaker and disadvantaged sections of the society. However, every State action has to be sanctioned by law and it is impossible to visualize the use of strong arm method by the State to deprive the citizens of their property without paying compensation.

It appears to us that the bureaucratic apparatus of the State has developed the habit of violating the law to deprive the citizens of their fundamental as well as legal rights. Hundreds and thousands of people of the State have been deprived of their land either without initiating acquisition proceedings or without paying compensation. If the Courts are not to protect the rights of the people and interests of the citizens, the edifice of the democratic set up will be destroyed and the people will be compelled to take law into their own hands.

With the above observations, the writ appeal is dismissed.

For filing a frivolous appeal like the present one, the appellants are saddled with costs of Rs.10,000/- which shall be deposited with the Member Secretary, Andhra Pradesh State Legal Services Authority and shall be recovered by the State Government from the salary of the officers who may be found responsible for filing vexatious litigation.

As a sequel to dismissal of the appeal, W.A.M.P.No.520 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

05.04.2007

C.V.NAGARJUNA REDDY, J

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[1] **AIR 1993 SC 2517**